IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH JAIPUR.

S.B. CIVIL WRIT PETITION NO.3424/1996.

Kanhaiya Lal and anr.
Vs.
Board of Revenue and ors.

Date of order:- 22/10/2007.

PRESENT
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Saransh Saini with
Ms. Neelam Pareek
Ms. Pratibha Sharma and
Shri Laxmikant for the petitioners.
Shri K.K. Mehrishi with
Shri Timan Singh for the respondents.

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This writ petition is directed against the judgment dated 30/11/1987 passed by the Board of Revenue whereby the appeal of the petitioners filed against the judgment dated 26/11/1980 was rejected by the revenue appellate authority as also the order dated 13/5/1994 whereby the review petition was also dismissed by the Board of Revenue. A prayer has also been made to issue a writ of mandamus declaring that khatedari rights be accorded in favour of the petitioners and they may not be dispossessed.

2) According to the petitioners, they are in possession of the land in Khasra No.21 measuring 28 bighas 11 biswas situated in village Borda, Tehsil Sangod from the time their father, late Hira Lal who was in possession of this land for many decades and cultivating the same as a sub-tenant of the deity namely Shri Rangnathji Maharaj. His possession being 80 years old, Hira Lal acquired khatedari rights in view of the provisions of Section 15 of the Rajasthan Tenancy Act. A revenue suit was filed in the nature of deity under Sections 80 and 183 of the Rajasthan Tenancy Act against the deceased father of petitioners Hira and Ranglal Pujari of the deity who has also expired and is presently represented by his legal heirs namely, respondents No.5 to 8. In the suit, the deity was represented by Shri Shrikrishna who claimed himself to be Manager and prayed for declaration that the deity was khatedar tenant of the land and predecessor-in-title of the petitioners and Hira Lal was trespasser and was liable to be

evicted.

3) Hira Lal contested the suit and contended that though the deity was the khatedar tenant, but he was cultivating the land on its behalf as well as on behalf of Pujari of the deity. The so-called Manager of the temple, Shri Krishna was neither next friend of the deity nor he was otherwise authorised to represent the deity. He has no right to contest the suit on behalf of the deity. It was pleaded that Hira Lal was making payment of the lagan to the deity regularly. The so-called Manager Shri Krishna wanted to evict the petitioner to himself cultivate the land and, therefore, the suit was motivated. The suit was filed without sanction of the Devasthan Department and was therefore incompetent.

4) The Board of Revenue vide order dated 22/12/1976 partly allowed the suit. Although, in the judgment it declared the deity as the khatedar tenant but declined to grant relief of ejectment of the defendant No.1 Hira Lal who was

predecessor-in-title of the petitioner.

5) An appeal thereafter was filed on behalf of the deity before the revenue appellate authority Kota (for short "Authority"). The authority allowed the appeal observing that the deity was competent to evict the defendant No.1 and therefore passed the decree of ejectment. Further appeal filed before the Board of Revenue was also dismissed. Hence, this writ petition.

6) I have heard Shri Saransh Saini, learned counsel for the petitioner and Shri K.K. Mehrishi, learned Senior Advocate for the respondents.

7) Learned counsel for the petitioner argued that the suit in the name of the deity under Section 153 of the Rajasthan Tenancy Act was not maintainable and that such suit could be filed only under Section 180 of the Act. Section 183 of the Act deals with ejectment of trespasser and Hira Lal was not trespasser but was a sub tenant for which a separate provision has been made in Section 180 of the Act of 1955.

Petitioner was sub-tenant and was cultivating on behalf of tenant and was regularly making the payment of the lagan without any default. The learned courts below erred in law in treating Shri Krishna as the next friend of the deity. It was only Rang Lal, Pujari of the temple who could file a suit. The suit was filed without any legal and was motivated by personal interest of the Manager who wanted to evict the petitioner from the land and himself wanted to cultivate the same. It was argued that the judgment and decree of the learned revenue appellate authority was invalid in law because the legal representatives of the Pujari of the temple Shri Rang Lal were not brought on record who expired during the pendency of appeal. Shri Saransh Saini, learned counsel for the petitioner relied on the judgment of Division Bench of this Court in **Bachh Raj Vs. Sunder Mal and others : AIR 1963 Rajasthan 119**. Shri Saransh Saini further argued that petitioner being a sub tenant of the land in dispute on

year to year basis, he could not be treated as trespasser in view of law laid down by the Full Bench decision of the Board of Revenue in Ramgopal Vs. Durga Shanker : RRD 1987 487.

8) On the other hand, Shri K.K. Mehrishi, learned counsel for the respondents opposed the writ petition and argued that Shri Krishna being Manager of the temple was responsible for protecting its properties. He was therefore very much competent to file suit on behalf of the deity. No pleadings on the question of malice on the part of Shri Krishna have been made in the written statement therefore such arguments cannot be allowed to be made. Besides, mere non-impleadment of the legal representatives of deceased pujari of the temple would have no effect on validity of the judgment and decree originally passed. The revenue appellate authority and the Board of Revenue have passed just and reasoned orders. The impugned judgments do not call for any interference by this Court.

9) Shri K.K. Mehrishi argued that there was no requirement for Shri Krishna either to file a suit with the permission of the court as the deity is considered to be perpetual minor. Shri Mehrishi relied on the Division Bench judgment of this court in **Jodha Vs. Board of Revenue : 1979 RRD 160** and on the basis of that judgment argued that relief of ejectment could be granted even under Section 180(1)(b) of the Act even if such sub-tenant claims to be holding on year to year basis.

10) Shri K.K. Mehrishi, learned senior counsel for the respondents argued that the learned Board of Revenue has allowed the suit to the extent that the land in dispute was in khatedari of Moorti Shri Rangnathji Maharaj who was competent to sublet the same at its will. The authority treated Shri Krishna as next friend of Moorti Shri Rangnathji Maharaj and an order was passed to make necessary amendment in the appeal.

11) I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties and perused the material on record.

12) Even if it is accepted that petitioner was sub-tenant of holding from year to year basis, relief of ejectment in that event could also be granted against him. Learned counsel for the respondent has cited the judgment of the full bench of the Board of Revenue in the case of Bhalla Vs. Mst.Gulab Kanwar : RDD 1977 1 which was cited before the revenue appellate authority where the Board held that a sub-tenant after expiry of the period of the lease, is a trespasser and not a tenant or sub-tenant or holding over. But, even if this is not accepted, as held by the Division Bench of this Court in Jodha, supra, a suit claiming ejectment of sub-tenant could be filed and maintained under Section 180(1)(b) of the Act of 1955 and on that basis the decree of ejectment could validly be passed. Mere reference of Section 183 in the

body of the suit and not of Section 180, would not make any difference because jurisdiction of the court in entertaining and deciding the suit and passing the judgment and decree for grant of such relief can still be traced to the provisions of Section 180. There is no material on record which expressly suggest that Shri Krishna Manager/Pujari was acting against the interest of the deity or intentionally wanted himself to grab the land. The petitioner, and for that matter, his predecessor-in-title Hira Lal was merely permitted to cultivate the land for the time being. He cannot insist on for continuity in possession of the land perpetually.

13) I therefore do not find any error either in the judgment of the authority or of the Board whereby taking a decision. The writ petition therefore is dismissed. There is no order as to costs.

(MOHAMMAD RAFIQ), J.

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